



United States
Department of
Agriculture

Food and
Nutrition
Service

Mountain
Plains
Region

1244 Speer Boulevard
Denver, CO 80204

FEB 9 1993

Reply to
Attn. of:

SFSP-183

Subject:

Registration of Food Service Management Companies (FSMCs) in Chapter 11

To:

STATE AGENCY DIRECTORS
(Special Nutrition Programs)

- Colorado ED, Iowa, Kansas, Missouri DH,
Montana OPI, Nebraska ED, North Dakota,
South Dakota, Utah, and Wyoming DHSS

It has come to our attention that there is some confusion concerning the registration of FSMCs who are involved in Chapter 11 bankruptcy proceedings. The following guidance should be followed when an FSMC involved in Chapter 11 applies for registration in the Summer Food Service Program (SFSP).

o FSMCs may not be denied registration in the SFSP solely because they are in Chapter 11. The Federal bankruptcy code forbids any governmental unit from failing to renew or issue licenses, permits, etc., or otherwise inhibit a company's ability to operate, solely on the basis that the company is in Chapter 11.

o It follows that it is impermissible to impose extra conditions on these companies in order for them to be registered. Thus, requiring "additional criteria or assurances" from such companies, or requiring them to obtain bonds even when their contracts will not exceed \$100,000, would be impermissible because such requirements would impose more stringent conditions on a company solely because it is in Chapter 11.

o It is incumbent on the State reviewing a FSMC's application to meet its legal obligations required by Section 13(1)(2) of the National School Lunch Act and Part 225.6(g)(6) of the SFSP Regulations. The Law and Regulations require State Agencies (SAs) not to register a company which lacks the administrative and financial ability to perform. However, SAs may not deny registration solely based upon the fact that a company is in Chapter 11 bankruptcy. The bankruptcy is one factor which may be considered along with other factors which could affect a company's administrative and financial ability to perform. The reasons for a company's declaration of Chapter 11 could bear upon the SA's determination of whether a company in Chapter 11 could be registered; however, there are instances where a Chapter 11 bankruptcy may not reflect upon a company's ability to perform.

o It is impossible to say what bonding companies may do when receiving an application for bid or performance bonds from one of these companies. Last year, prior to its declaration of Chapter 11, Stewart Sandwiches obtained bonds in Virginia but could not obtain them in Georgia. If a bonding company refuses to provide a bond to a company in Chapter 11 when such bond is required by the SFSP Regulations, the company may not, of course, participate in the SFSP.

If you have any questions, please contact my staff at (303) 844-0359.

Ann C. Hector

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Regional Director
Special Nutrition Programs